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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 LUCIANO TONELLI,

12 v.
13 Plaintiff,

14 ARLEE ROTHWELL et al.,

15 Defendants.

16 CASE NO. C12-5751 RJB-JRC

17 REPORT AND RECOMMENDATION

18 NOTED FOR:

19 JULY 5, 2013

20 This 42 U.S.C. §1983 civil rights matter has been referred to the undersigned Magistrate
21 Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges Rules MJR 1,
22 MJR 3, and MJR 4.

23 Mail sent to plaintiff was returned on March 25, 2013, as undeliverable. Prison mail room
24 staff placed a notation on the returned mail that plaintiff was deceased (ECF No. 14). Defendants' counsel attempted to have the action dismissed by filing a "statement of death." (ECF No. 11). Counsel did not formally serve the statement on next of kin or the executor of plaintiff's estate as required by Fed. R. Civ. P. 25. The Court entered a Report and

1 Recommendation to deny the motion (ECF No. 12). The District Court adopted that Report and
2 Recommendation (ECF No. 13).

3 It has now been sixty days since plaintiff's mail was returned as undeliverable and the
4 Court does not have an address for plaintiff or plaintiff's executor. Pursuant to Local Rule
5 41(b)(2), the Court recommends dismissal of this action without prejudice.

6 Dated this 6th day of June, 2013.

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J. Richard Creatura
United States Magistrate Judge

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